

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

November 17, 2005

A meeting of the Board of Environmental Protection was held on Thursday, November 17, 2005, at the Holiday Inn / Ground Round, Augusta, Maine. Matthew Scott, Chair, called the meeting to order at 10:00 a.m. with the following individuals present:

Board: Nancy Anderson, Elizabeth Ehrenfeld, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson and Nancy Ziegler

Absent: Denis Culley

<u>Staff:</u>	Bureau of Air Quality	Marc Cone
	Bureau of Land and Water Quality	Jeff Madore
	Bureau of Land and Water Quality	Andrew Fisk
	Bureau of Remediation and Waste Mgmt.	Paula Clark
	Bureau of Remediation and Waste Mgmt.	Jim Glasglow

Others: David P. Littell, Deputy Commissioner
Peggy Bensinger, Assistant Attorney General
Cynthia S. Bertocci, BEP Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 5:00 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Casco Bay : The US Environmental Protection Agency approved a grant of \$742,000 for work in the Presumpscot River watershed under the leadership of the Casco Bay Estuary Partnership and Friends of Casco Bay. This grant represents 1 of only 11 issued nationwide speaking very well of the work that Casco Bay Estuary project members do and importance of the work done to protect Maine's most populated bay. Commissioner Gallagher recently participated in a press conference with Bob Varney, EPA Region I Administrator, to acknowledge the grant award.

Budget: The current version of the budget in Congress may result in an across the board cut of 2% to support, in part, funding for Katrina relief efforts. The Department currently receives approximately \$10 million from federal funding sources and a 2% decrease would result in the loss of \$200,000. A reduction in federal funding will have the largest impact on the Department's water program which obtains a large amount of its funding from federal sources.

Financial consolidation: The State is implementing its financial consolidation plan, which has resulted in the Department issuing a number of lay-offs and letters of intent to lay-off. The Department hopes to find employment in the new service center or elsewhere in state government for these employees.

Sprague Release: A liquid asphalt release at the Sprague facility in South Portland verified the high value of a secondary containment system. The 86,000 gallon release was restricted to the secondary containment area avoiding environmental impacts and limiting damage to the boiler building.

BEP Jurisdiction. The Department has received several requests for Board jurisdiction on two pending applications; one request for a multi-unit housing project in Orono, and six requests associated with an application for a power generating facility in Athens. The Commissioner's reply is pending on both at this time. The GenPower application is currently being reviewed for completeness and has not been accepted for processing. Once that application is accepted the Commissioner will consider the requests for BEP jurisdiction.

CHAIRMAN'S COMMENTS: NONE

B. EXECUTIVE ANALYST COMMENTS:

March 2, 2006 is the date of the public hearing on the Court Remand of the Uliano application to construct a private recreational dock. The hearing will be in Ellsworth. It is anticipated that this will be a half day hearing, with presentation of evidence and

cross examination by the parties scheduled for the afternoon and an evening session for the public.

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS: Reviewed

Board member Elizabeth Ehrenfeld asked about the nature of the change to the conservation easement condition associated with the permit for Sugarloaf Land Partners.

Jeff Madore explained that a change to the project has resulted in a change to the conservation easement originally included in the permit conditions.

The Department will provide Ms. Ehrenfeld with a copy of the condition compliance L-00217-TE-GJ-C.

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

1. CUMBERLAND FARMS, INC., North Berwick, South Berwick, Wells, Saco, Gorham, Portland - Administrative Consent Agreement and Enforcement Order (BAQ)
2. REST A WHILE REALTY TRUST, Wells – Administrative Consent Agreement (BLWQ – Land)

The Board voted (8-0-0-1) on a motion to approve consent agenda items 1 and 2 as presented.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson and Nancy Ziegler voted to support the motion. Board member Denis Culley was absent.

3. JON B. HYVONEN and REBECCA T. HYVONEN, Willimantic – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
4. LOUIS F. NICHOLAS d/b/a LOUIS F. NICHOLAS MASONRY, Willimantic – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)

The Board voted (8-0-0-1) on a motion to table action on consent agenda items 3 and 4 for consideration at the December 1, 2005 meeting and directed the Department to provide more information regarding penalty amounts and the status of the application for an after-the-fact permit.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson and Nancy Ziegler voted to support the motion. Board member Denis Culley was absent.

III. Regular Agenda

1. CHAPTER 355, COASTAL SAND DUNE RULES (provisional adoption)
Staff: Andrew Fisk and Jeff Madore, Bureau of Land and Water Quality

The Board voted (8-0-0-1) to provisionally adopt Chapter 355, Coastal Sand Dune Rules, with the following amendments:

Section 5.E.2 (a)ii Seawalls and similar structures:

Within twelve months of ~~from~~ the date that the notification....

Section 5.E. 2 (b) Seawalls and similar structures:

...two criteria outlined in subsection 1 above. Emergency actions that permanently alter the structure authorized under 38 M.R.S.A. Section 480-W to strengthen the structure include widening the footings and securing the structure to the sand and do not include increasing the height of the structure.

Section 8. E. Public access and no development.

... permanent public ownership or public conservation easements **that** preclude any development...

The vote was taken pursuant to 38 M.R.S.A. Section 341-D and 480-A through 480-AA.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson and Nancy Ziegler voted to support the motion. Board member Denis Culley was absent.

2. FOLLOW-UP PROCESS / ROLE DISCUSSION
Staff: Cynthia S. Bertocci, Executive Analyst

There was a brief discussion of issues to pursue further.

BOARD RECONVENED AT 1:30 AND CONDUCTED A PUBLIC HEARING ON PROPOSED AMENDMENTS TO THE FOLLOWING RULES:

Chapter 418, Beneficial Use of Solid Waste
Chapter 409, Processing Facilities
Chapter 405, Water Quality Monitoring, Leachate Monitoring, and Waste Characterization; and
Chapter 402, Transfer Stations and Storage Sites for Solid Waste

Next Regular Board Meeting – Thursday, December 1, 2005 – Holiday Inn/Ground Round, Augusta

BOARD OF ENVIRONMENTAL PROTECTION
Holiday Inn / Ground Round, Augusta at 10:00 a.m.
November 17, 2005

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

ADMINISTRATIVE CONSENT AGREEMENT:

Proposed wastewater discharge enforcement resolution open for public comment
Pursuant to 38 M.R.S.A. §347-A(6)

David W. Hasson, Portland

(Staff: Phil Garwood 287-7695)

Tentatively scheduled for Board action on December 1, 2005

Maine Coast Memorial Hospital, Ellsworth

(Staff: James Crowley 287-8898)

Tentatively scheduled for Board action on January 5, 2005

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III. REGULAR AGENDA ITEMS

1. CHAPTER 355, COASTAL SAND DUNE RULES (provisional adoption)
Staff: Jeff Madore, Bureau of Land and Water Quality
2. FOLLOW-UP PROCESS / ROLE DISCUSSION (as time allows)
Staff: Cynthia Bertocci, Board of Environmental Protection

BOARD TO RECONVENE AT 1:30 TO CONDUCT RULEMAKING PUBLIC HEARING(S):

Chapter 418, Beneficial Use of Solid Waste
Chapter 409, Processing Facilities
Chapter 405, Water Quality Monitoring, Leachate Monitoring, and Waste Characterization; and
Chapter 402, Transfer Stations and Storage Sites for Solid Waste

Next Regular Board Meeting – Thursday, December 1, 2005 – Holiday Inn/Ground Round, Augusta